

EXCLUSIVE: CRIME LAB MESS

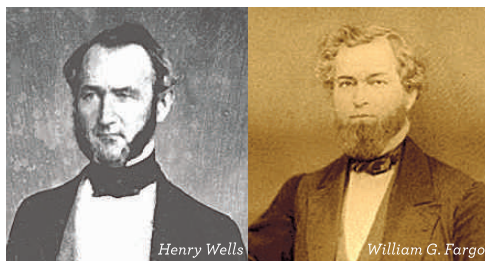
DEFENDANTS FILE TO OVERTURN CHARGES

42 CASES AND COUNTING

A2-4

Watch our video coverage of the crime lab saga. newsday.com

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Henry Wells

William G. Fargo

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William G. Fargo served two terms as mayor of Buffalo from 1861 to 1865, published the Buffalo Courier, and was president of the American Express Company. In 1868, Henry Wells founded the Wells College for young women in Aurora, New York. To learn more, please visit wellsfargo.com/wachovia.

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THE CASES SO FAR

Of the **42 felony cases** that have been challenged so far:

18

DRUNKEN DRIVING

8

DRUG

4

MOTIONS TO SUPPRESS EVIDENCE

4

BASED ON REPORTS OF LAB'S PROBLEMS

3

INVOLVE PALM PRINTS, FINGER-PRINTS OR DNA

3

INVOLVE BALLISTICS

1

LISTS NO BASIS

1

ALLEGEDLY DAMAGED EVIDENCE

SOURCE: NASSAU DISTRICT ATTORNEY'S OFFICE



Check for the latest on the crime lab fallout. newsday.com

TAKING ON the crime lab

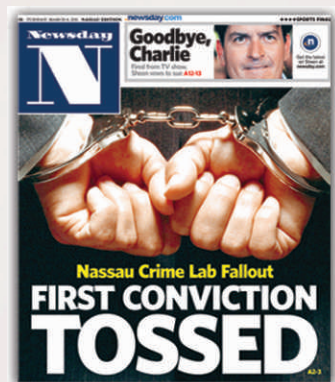
How Newsday covered the story



Dec. 13, 2010



Feb. 19, 2011



March 8, 2011

42 defendants move to overturn charges

BY ANN GIVENS
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Dozens of people accused of felonies in Nassau County — five of them already convicted — have filed legal challenges seeking to throw out charges based on potentially tainted evidence at the county's now-shuttered Police Crime Laboratory.

The 42 defendants in cases dating to at least 1991 include ex-Marine James Farr, convicted of fatally injuring two brothers while driving drunk in East Meadow, and an inmate serving 12 years for felony drug possession. One filed his own motion from prison. Another has been granted a new trial.

Most of these cases are based on potential evidence problems at the lab and eight are based more generally on the fact that the lab has been closed.

Of all the motions filed — the vast majority are for pending cases — 18 are drunken-driving charges, and eight are drug charges, prosecutors said. The remaining 16 are on a variety of charges and grounds, including a 1991 kidnapping case and a 2009 murder charge in which the defendant is challenging the ballistic evidence collected by the lab.

While experts caution that no prisoners should expect easy dismissals or overturned convictions, the fact that challenges are coming from those already convicted raises the stakes for the county as it tries to contain long-term damage from the lab's ills. The older the case, the harder it will be

for the county to gather witnesses and other evidence. And there could be civil challenges ahead.

Defense lawyer Michael DerGarabedian, of Rockville Centre, said he expects to file about 12 motions this week, all for clients who pleaded guilty to drug charges before learning about problems at the crime lab.

"How do you begin to compensate someone for years of their life that they lost in prison?" he said.

'This is just the beginning'

A special judge has been assigned to hear allegations of botched lab evidence in the felony cases, and lawyers say the number of challenges is likely to multiply if evidence of mismanagement or mistakes at the lab mount. What's more, there are an unspecified number of misdemeanors facing or likely to face challenges.

"This is just the beginning," said William Kephart, president of the Nassau Criminal Courts Bar Association.

County officials closed the lab in February, two months after it was placed on probation because of concerns over the handling of evidence and other deficiencies. On March 24, Nassau District Attorney Kathleen Rice notified nearly 300 prisoners that their cases might be affected. State Inspector General Ellen Biben is investigating the history of lab deficiencies.

Two weeks ago, a Nassau County judge ordered a new trial for Erin Marino, one of the five people convicted of felonies. She was found guilty of driving drunk in June 2009 when she slammed into the

rear of a minivan, injuring three people. Prosecutors have said they will appeal.

Kephart said lawyers for many other clients are watching as the early cases such as Marino's move through the court. He predicted that more cases will be challenged as people with past convictions become aware of lab problems, and any additional information comes out through retesting or the state inspector general's investigation.

Rice, the district attorney, said in a statement that she is reviewing cases one at a time, and aims to treat each defendant fairly. She said she is not troubled by the challenges so far, which represent a very small percentage of the roughly 5,000 felony cases the office handles each year.

"Even assuming some dramatic increase that we've yet to see, we expect to be able to handle each challenge with the resources and attention normally focused on a case," Rice said.

Challenge in murder case

One of those challenges was filed by defense attorney Dana Grossblatt of Jericho, who asked a judge to keep gunshot residue evidence out of the trial of a man charged with second-degree murder, or to hold a hearing on the matter.

Grossblatt, who would not identify her client, contends the gunshot residue collected by the Nassau lab and mailed to a Pennsylvania company for testing, arrived in an envelope that had been opened and not properly sealed.

The police crime lab, which

FIVE CASES

In each of these cases, prosecutors say there's nothing to suggest that police lab errors affected the integrity of the case evidence in question.



PHOTO BY PATRICK E. MCCARTHY

1. ERIN MARINO

Last August, Marino, 30, of Hicksville, was convicted of drunken driving and aggravated vehicular assault for slamming into a minivan and causing injuries to three people. In December, 11 days after the Nassau police crime lab was placed on probation, she became the first defendant to request that her conviction be overturned because of the lab's problems.

Marino's attorney, Brian Griffin, said in court papers that the conviction should be thrown out because a report on the police lab's work found the machine used to test the level of alcohol in her blood had not been maintained properly. The minivan's driver was seriously hurt in the crash, prosecutors said. On March 7, Nassau Judge George Peck ordered a new trial for Marino.

Prosecutors have promised to appeal.

— ANN GIVENS

See LAB on A4

See CASES on A4

Going after lab

LAB from A3

tested blood, drugs, fingerprints, ballistics and other evidence, was put on probation Dec. 3 by a national lab accreditation agency for failing to meet 26 protocols deemed essential or important. County officials closed the lab's drug-testing unit Feb. 10 and then shut the entire lab Feb. 18 after allegations that police managers may have failed to disclose inaccurate testing.

Legal hurdles remain

Legal experts said defendants with the best hope of having charges tossed out are those whose cases are still open, and those who were convicted after trial. People who pleaded guilty to crimes will face a higher legal burden to withdraw those pleas.

"The strongest cases would be a drug or DWI case where you could point specifically at the results and question whether the results are reliable," said Gene O'Donnell, who teaches law and police studies at John Jay College of Criminal Justice in Manhattan.

University of Utah law professor Daniel Medwed, a nationally recognized expert in wrongful convictions, said the challenge for defense attorneys will be to prove that the new revelations about mistakes at the lab "would have created the probability of a different outcome" at trial.

"It's a relatively tough hurdle," McCann said.

The disclosure last month that prosecutors will retest all felony drug evidence collected over the past three years and re-evaluate blood-alcohol testing in drunken-driving cases back to 2006 has a lot of defendants waiting to see what their retest shows before they file.

Garden City lawyer Brian Griffin, who represents Erin Marino, said: "I think people are waiting for the dust to settle."



PHOTO BY HOWARD SCHNAPP, 2010

CASE STUDIES CONTINUED FROM A3

2. JAMES FARR

Farr, 34, of Garden City, convicted of striking and killing two brothers on Hempstead Turnpike in East Meadow while he was driving drunk, says in a motion the blood evidence against him is not reliable.

"We believe in the justice system, but we also believe James deserves a fair trial," said Farr's mother, Debbie Vannoy of West Virginia. "With all the new information that's come up, we think the jury needs to know about it."

At trial, a jury acquitted Farr of second-degree manslaughter — the most serious charge he faced — but convicted the ex-Marine of criminally negligent homicide.

Now attorney Gregory Grizopoulos has asked County Judge David Sullivan to set aside the verdict on the grounds that Farr's blood test, which showed that he had a blood-alcohol content of .18 percent, more than two times the legal limit four hours after the crash, is not reliable.

Jurors did not know about the lab problems because Farr's trial ended in November, before the accreditation group's report. In his motion, Grizopoulos said there's reason to believe that if a jury had known about the problems at the lab, they would have rendered a verdict more favorable to Farr.

Prosecutors have said, while an instrument used in testing blood alcohol had not been calibrated since 2007 as required, it was found to be working properly when it was calibrated after the lab problems were discovered last December. Therefore, they said, that failure did not affect test results.

Grizopoulos conceded at trial that Farr was drunk, though he didn't concede that the blood test was accurate.

Brothers Thomas and Joseph Occio-grosso, of Riverhead and East Meadow, respectively, died after Farr plowed his sport utility vehicle into them Aug. 23, 2008. He is free on \$175,000 bond pending sentencing. — ANN GIVENS

3. JOSEPH WILSON

In a hand-printed legal motion, Joseph Wilson, 46, of West Hempstead, says he should be released from the Bare Hill Correctional Facility in upstate Malone.

Wilson pleaded guilty to selling crack in Hempstead in 2007 and agreed to enter a drug-treatment program. But after failing to show up sever-

al times and testing positive for cocaine, he was sentenced to up to 4 years in prison in 2010.

In his motion, Wilson, who is representing himself, cited recent statements by District Attorney Kathleen Rice about the lab. "From Kathleen Rice's statement it is clear that at least one part of the lab had evidence that was compromised; and that part is the part that handled drug

samples," Wilson stated.

Joel Rudin, a Manhattan attorney known for wrongful-conviction work, said the odds are against inmates like Wilson, who represent themselves.

"Except maybe in death penalty cases, at least 95 percent of criminal defendants do not have access to legal assistance" after they go to prison, Rudin said.

— KATHLEEN KERR

4. GERMAINE MCCANTS

A lawyer for Germaine McCants, 27, a prisoner at the upstate Franklin Correctional Facility, wants a judge to set aside his 2007 felony conviction for cocaine possession because of revelations about sloppy procedures at the lab.

Attorney Virginia Conroy of Rockville Centre said that

before McCants went on trial, the district attorney should have revealed reports and letters criticizing the lab in 2005 and placing it on probation in 2006.

However, Nassau District Attorney Kathleen Rice has said she was unaware the lab was on probation in 2006.

Conroy has filed a motion asking Acting Supreme Court Justice Joseph Calabrese to vacate McCants'

conviction. On June 22, 2007, McCants began serving a sentence of up to 12 years in prison.

"All of the charges Mr. McCants was convicted of required proof beyond a reasonable doubt that the substances subject to the charges had a chemical identity of cocaine," Conroy said in her motion. Conroy declined to comment on the case.

— KATHLEEN KERR

5. RICHARD THRASHER

Richard Thrasher, 29, of Valley Stream, was admitted into a drug diversion program after pleading guilty to felony cocaine possession in January 2010. But he was arrested again during the year on a drug charge in Maryland. That case is still pending, according to court records.

Now Thrasher is challenging his original Nassau County guilty plea, saying

the tests done to determine whether he possessed cocaine, and how much, are not reliable in light of the mismanagement that has since been discovered at the Nassau lab.

If the charge is either thrown out or reduced to a misdemeanor, it would drop the amount of time he faces behind bars on the Nassau charge from a maximum of 2 years down to less than a year.

Thrasher's lawyer, Mahmoud Rabah, of Forest Hills,

said the weight of the drugs was essential in Thrasher's case. Even a small discrepancy on the weight of the drugs would mean the difference between felony and misdemeanor charges against Thrasher.

"When the DA said the lab tested the substance, it was cocaine, and it was this weight, we are expected to believe that," Rabah said. "We relied upon that representation. Then the lab story blew up."

— ANN GIVENS